

**ENVIRONMENTAL HEARING BOARD  
RULES COMMITTEE**

**MINUTES OF MEETING OF MAY 24, 2018**

**(DRAFT)**

**Attendance:**

The Environmental Hearing Board Rules Committee met on May 24, 2018 at 10:30 a.m. Participating in the meeting were the following Rules Committee members: Chairman Howard Wein, Vice Chair Maxine Woelfling, Jim Bohan, Brian Clark, Phil Hinerman and Matt Wolford. Participating from the Environmental Hearing Board were the following: Chief Judge and Chairman Tom Renwand, Judge Bernie Labuskes, Judge Rick Mather, Judge Steve Beckman, Board Secretary Christine Walker, and Assistant Counsel Eric Delio, Nikolina Smith and Maryanne Wesdock, who took the minutes.

**Minutes of Meeting of March 8, 2018:**

Mr. Delio pointed out a correction in the minutes of the March 8, 2018 meeting.<sup>1</sup> With that correction, the minutes were approved on the motion of Ms. Woelfling, seconded by Mr. Bohan.

**Summary of Upcoming Rules Package:**

Mr. Wein suggested that the Board should begin work on the next rules package and asked Ms. Wesdock to circulate a summary of the amendments to be included in the next rules package.<sup>2</sup>

**Revisions to Appeal Language in DEP Actions:**

At the March 8, 2018 Rules Committee meeting, Mr. Delio suggested that the Department add the Board's website to the "notice of appeal" language contained in Department actions. DEP

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<sup>1</sup> The reference to "25 P.S. § 7514(h)" on page 4 of the draft minutes was incorrect, and was changed to "35 P.S. § 7514(h)."

<sup>2</sup> A summary of the rules package was circulated to the Rules Committee members and judges on May 29, 2018.

Chief Counsel Alex Chiaruttini made additional changes to the appeal language and circulated it to the Rules Committee for review prior to the May 24 meeting. Additional changes were recommended by Rules Committee members and EHB judges and staff at the May 24 meeting and by email following the meeting. The recommendations were taken under advisement by the Department. By email dated May 25, 2018, Ms. Chiaruttini thanked the Environmental Hearing Board and Rules Committee for their comments and recommendations, and she circulated the revised notice of appeal language adopted by the Department. She stated that she and Mr. Bohan would work with the Department's Executive Deputy to ensure that the revised language is used consistently statewide.

**Filing and Service of Exhibits:**

Mr. Delio explained that due to problems that sometimes occur during the electronic filing of exhibits to prehearing memoranda or lengthy summary judgment motions, some attorneys request permission to file exhibits by non-electronic means, such as on a flash drive or by hard copy. When the exhibits are filed non-electronically, they are not served on the Board or other parties on the day the prehearing memorandum or motion is filed. While this may not be a problem for the Board, it could present a problem for the other parties who may be under a time constraint to respond to the motion or prehearing memorandum. Mr. Delio explained that sophisticated attorneys may resolve this issue by serving exhibits on co-counsel by means of a shared drive or dropbox. However, for those who do not serve their exhibits in this manner, there is a delay in the receipt of the exhibits by the other parties.

Mr. Bohan inquired as to what issue is preventing attorneys from efilings exhibits. Mr. Delio explained that all efilings are subjected to "optical character recognition" (OCR), and in the case of maps or exhibits of poor quality, the OCR sometimes causes them to get hung up

indefinitely and then the Board must reject the filing. If one document doesn't pass through the OCR, it holds up all of the documents that are part of the filing. The Board's website and electronic filing provider, LT Court Tech, is not able to override the OCR processing. Even pdf files must go through OCR. Additionally, even if a party runs the file through his or her own OCR, the Board's efilings system will do it again.

Mr. Wein asked whether documents provided on flash drive must pass through OCR. Mr. Delio explained that when exhibits are provided on a flash drive, the Board does not upload them to the electronic docket. The Board simply makes a docket entry stating that the exhibits were filed. If the Board were to upload the documents, they would have to pass through OCR.

Mr. Bohan expressed a concern that some parties may not attempt to efile their exhibits, but simply file them on flash drive in order to avoid a potential problem. Mr. Delio noted that it is happening more frequently with the filing of prehearing memorandum exhibits.

Mr. Wein asked whether parties are notified if their filing does not go through. Mr. Delio explained that if a party files exhibits as part of one filing, he or she is simply notified that the entire filing was rejected. The Board then must call the party to advise him or her as to which exhibit caused the problem.

Judge Renwand explained that the Board has pushed LT Court Tech to fix the problem and that Mr. Delio has worked extensively with them to develop a solution. However, there has been no resolution to date. A discussion ensued as to whether parties decline to efile exhibits in order to avoid having the exhibits made accessible on the Board's website. Judge Renwand stated that he believes parties avoid efilings in order to avoid efilings problems, not to prevent exhibits from being accessible on the website.

With regard to the original question raised by Mr. Delio (i.e., the filing of exhibits on a flash drive or by hard copy, which results in opposing counsel not receiving the exhibits for several days), no one on the Rules Committee has encountered this problem. Mr. Bohan reported that he has not heard any complaints about it from Department attorneys.

Ms. Wesdock asked whether the Board should amend its rules to allow parties the option of filing prehearing memorandum exhibits by means other than efilng. The consensus was that this would encourage parties to file their exhibits in hard copy, whereas the Board would like to have exhibits filed electronically where possible. Therefore, no change to the rules was recommended. If an issue arises, the assistant counsel and judge can address it on a case-by-case basis.

#### **Media in the Courtroom:**

Judge Labuskes reported that the Board has received no requests to have cameras or recording devices in the courtroom since the Board's discussion of this topic at an earlier meeting. Mr. Wein asked whether the judges would still like the Rules Committee to address it. The judges will discuss it and advise the Committee at the next meeting.

#### **Nunc Pro Tunc Guidelines:**

Mr. Bohan stated that he expects to be able to address this issue at the next meeting.

#### **Upcoming Rules Committee Meetings:**

The upcoming meetings in 2018 are as follows: July 12, September 13, November 8. All meetings are at 10:30 am.

#### **Adjournment:**

On the motion of Ms. Woelfling, seconded by Mr. Bohan, the meeting adjourned at 11:36 a.m.